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Federal Communications Commission
Office of the Secretary

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Federal Bureau of Investigation
Office of the Director
Washington, D.C.

**SUPPLEMENTAL COMMENTS OF COX RADIO, INC.
AND CXR HOLDINGS, INC.**

Cox Radio, Inc. and its subsidiary CXR Holdings, Inc., licensee of Radio Station WEZN-FM, Bridgeport, Connecticut (collectively “Cox Radio”), by its attorneys, hereby respectfully submits these Supplemental Comments in the above-captioned proceeding on the question of whether a third local aural service should be allotted to the community of Montauk, New York.¹ Cox asks for the Commission’s permission to file these comments outside of the authorized pleading cycle in order to clarify the record.²

¹ Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montauk, New York), *Notice of Proposed Rule Making*, MB Docket No. 03-155, RM-10735, DA 03-2104 (rel. July 3, 2003).

² The FCC has, in its discretion, considered late-filed comments in rulemakings to ensure a complete and accurate record. *See, e.g.*, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Danville and Nonesuch, Kentucky), *Report and Order*, 18 FCC Rcd 9304 ¶ 1 (2003) (accepting late-filed comments “to ensure a complete and accurate record” in proceeding), Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bagdad and Chino Valley, Arizona), *Report and Order*, 11 FCC Rcd 14459 n.3 (1996) (accepting late-filed correction “to ensure an accurate record” in proceeding).

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The petitioner for the new Montauk allotment specified a set of coordinates that would result in a transmitter being located on one of the few parcels of private property in the area-to-locate. In its Comments, Cox reported that its local counsel had contacted the landowner of the proposed site and confirmed that “the site is not available for sale or for use as a transmitter site.”³ This assertion was based on a telephone call received by local counsel shortly before the Cox Comments were to be filed. Local counsel had sent a letter to the landowner informing him that his property was proposed as a site for a new radio tower. The letter resulted in a telephone call from a gentleman who identified himself as the landowner and who indicated in no uncertain terms that the land was not available for sale and that he would not consider allowing a tower to be built on the property.⁴ Local counsel thereupon reported this conversation to Cox, and Cox reported it to the Commission in its Comments.

Subsequent to the comment filing date, Cox’s undersigned communications counsel again contacted the landowner by mail, asking that the landowner sign a written statement for submission to the Commission to confirm that the land is not available for use as a transmitter location, as had been told to local counsel. In response, undersigned counsel received a phone call from a different person who identified himself as the landowner and who professed no knowledge of the earlier conversation. As best as can be determined, Cox now believes that the letter sent by local counsel that was addressed to the landowner was picked up and opened by the

³ See Comments of Cox Radio, Inc. and CXR Holdings, Inc., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montauk, New York), *Notice of Proposed Rule Making*, MB Docket No. 03-155, RM-10735, DA 03-2104 (filed August 25, 2003) (“Cox Comments”) at 3 and at Exhibit C (Memorandum from Lawrence J. Holt, Esq. to CXR Holdings, Inc. dated August 21, 2003) (“Holt Memorandum”).

⁴ See Holt Memorandum.

current owner's father (who at one time owned the property). The father then called local counsel, but did not inform his son of either the letter or of the conversation

In the interest of a complete and accurate record, Cox therefore asks that the third full sentence on page 3 of the Cox Comments be stricken from the record, as well as the second full paragraph of the Holt Memorandum. Instead, the record should reflect that the landowner has not consented to the sale or lease of his land for a transmitter location, but that he has refused to make any direct statement for the record in connection with this proceeding.

While Cox believed it important to correct the record regarding the unanticipated confusion concerning the owner of the property in question, this confusion should not overshadow the larger issue of whether ANY of the property in the area-to-locate could be used for a transmitter location because of significant zoning, environmental, and historical concerns. Cox continues to assert that a radio tower could not be built anywhere in the area-to-locate and that because of the factors identified by Cox and AAA Entertainment Licensing LLC, the burden shifts to the petitioner to provide the Commission with a reasonable assurance of tower availability during this allotment proceeding.⁵ This the petitioner has declined to do.⁶

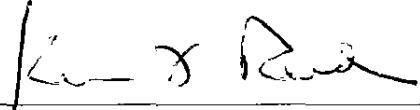
⁵ See generally Cox Comments; *see also* Comments of AAA Entertainment Licensing LLC, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montauk, New York), *Notice of Proposed Rule Making*, MB Docket No. 03-155, RM-10735, DA 03-2104 (filed August 25, 2003).

⁶ See Reply Comments of Petitioner, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montauk, New York), *Notice of Proposed Rule Making*, MB Docket No. 03-155, RM-10735, DA 03-2104 (filed Sept. 1, 2003).

Accordingly, the Commission should deny the proposal to allot a new aural facility to Montauk,
New York, on Channel 261A

Respectfully submitted,

COX RADIO, INC and CXR HOLDINGS, INC

By 

Kevin F. Reed

Christina H Burrow

Its Attorneys

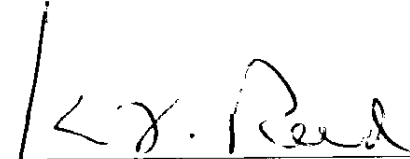
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N W , Suite 800
Washington, D C 20036
(202) 776-2000

September 15, 2003

Declaration of Kevin F. Reed, Esq.

My name is Kevin F. Reed, Esq. I represent Cox Radio, Inc. and CXR Holdings, Inc. I have read and helped prepare the foregoing "Supplemental Comments of Cox Radio, Inc. and CXR Holdings, Inc.," and the factual statements made therein are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Kevin F. Reed, Esq.
Dow, Lohnes & Albertson, PLLC

September 15, 2003

CERTIFICATE OF SERVICE

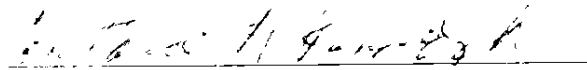
I, Constance Randolph, hereby certify that a true and correct copy of the foregoing "Supplemental Comments of Cox Radio, Inc. and CXR Holdings, Inc." was sent on this 15th day of September, 2003, via hand delivery or first-class United States mail, postage pre-paid as indicated, to the following:

John A. Karousos*
Assistant Chief
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dana J. Puopolo
2134 Oak St., Unit C
Santa Monica, CA 90405

Peter Tannenwald
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave, N.W.
Suite 200
Washington, D.C. 20036-3101

*denotes hand delivery


Constance Randolph